

REMARKS

Claims 50-71 are pending.

The Examiner has rejected claims 50-71 are rejected under 35 U.S.C. § 102(e) as being anticipated by Brown. Applicant respectfully disagrees.

The Examiner relies on Brown as teaching "scheduling the assignment to be performed at the determined time such that the assignments of a task are scheduled separately (col. 4, lines 24-48)." (Office Action, Aug. 25, 2005, p. 5.) The claims recite that a task is divided into assignments that are "a portion of a task that can be completed by a single resource." The relied-upon section of Brown is unrelated to scheduling of assignments or portions of a task. Rather, the relied-upon section describes only the scheduling of activities, which the Examiner believes corresponds to applicant's tasks. The Examiner states that "Brown's activities are equivalent to the claimed tasks." (Id.) Indeed, Brown uses the words activity and task interchangeably.

The relied-upon section of Brown describes the scheduling of activities based on the Maximum Greatest Resource Demand ("MGRD") and that the use of the MGRD is "to help establish priorities among activities [tasks] for scheduling purposes." (Id.) Brown further states that "as the number of different resource types required by an activity increases, the greater will be the need to schedule that activity earlier." (Id., emphasis added.)

Thus, although Brown factors in the types of resources of an activity into the scheduling of activities, Brown specifically teaches that activities are scheduled. Brown makes this requirement of activity-based scheduling clear in the following:

The methodology for implementation for any priority rule based heuristic scheduling method can be summarized as follows:

1. Solve a project network using the critical path method . . . while tracking require completion time for each activity and task.
2. Determine the priority rule values for each activity and task.

3. Rank the activities/tasks in order of the priority rule value.
4. Schedule the activities/tasks in priority order

(Brown, 3:15-27, emphasis added.) It is clear that Brown describes activity/task scheduling and is unrelated to scheduling of assignments or portions of a task as recited by these claims.

The Examiner has rejected claims 50-58 under 35 U.S.C. § 101 as being directed to non-statutory subject matters. In particular, the Examiner states "the claimed invention must be within the technological arts." (Office Action, Aug. 25, 2005, p. 2.) Applicant would like to direct the Examiner's attention to Ex parte Lundgren (U.S.P.T.O. Bd. Pat. App. & Intf., Appeal No. 2003-2088, Oct. 2005). In that recent opinion, the Board held that "there is no judicially recognized separate 'technological arts' test to determine patent eligible subject matter under Section 101." (Id. at p. 9.) Therefore, even though applicant disagrees with Examiner as to whether the claims are within the "technological arts," since there is no such requirement, the point is moot.

The Examiner has rejected claims 59-67 under 35 U.S.C. § 101 and 35 U.S.C. § 112, second paragraph, because the instructions are not recited as executable as the Examiner asserts is required by MPEP 2106. Applicant respectfully disagrees. First, there is no requirement in MPEP 2106 that a "computer program product" claim must use the language "executable." Second, even if there was such a requirement, MPEP 2106 no longer represents the policy of the PTO. (See, "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility," Oct. 25, 2005.)

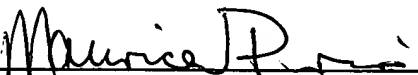
The Examiner has rejected claims 68-71 under 35 U.S.C. § 101 and 35 U.S.C. § 112, second paragraph, because "[i]t is not clear whether these components refer to hardware components, software executed on a computer/processor, or software *per se*." (Office Action, Aug. 25, 2005, p. 4.) Applicant respectfully disagrees. The claims clearly cover a "computer system" in which the components can be implemented in either hardware or software. For example, the component that determines a time can be implement using discrete logic, nano-instructions, microinstructions, or machine

instructions. There is no requirement in the law that a claim has to be limited to a particular type of implementation.

Based on the above amendments and remarks, applicants respectfully request reconsideration of this application and its early allowance. If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to call the undersigned at (206) 359-8548.

Dated: 11/7/2005

Respectfully submitted,

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